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Rockwell Automation, Inc.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ROCKWELL AUTOMATION, INC.,

Plaintiff,

vs.

BECKHOFF AUTOMATION LLC and  
BECKHOFF AUTOMATION GmbH,

Defendants.

Case No. 2:13-cv-01616-RCJ-NJK

~~PROPOSED~~ PROTECTIVE ORDER  
BASED ON ORDER RE: PROTECTIVE  
ORDER (DOCKET NO. 93)

IT IS HEREBY ORDERED that confidential information be disclosed in this matter only  
in the following designated ways:

1. As used in the Protective Order, these terms have the following meanings:

- “Attorneys” means (a) all counsel of record; and (b) outside counsel for a party who is not an employee or officer of a party or related entity and who has been provided with a copy of this Protective Order and executed a “Written Assurance” in the form attached as Exhibit A and which is subsequently provided to the other party’s lead counsel;
- “Confidential” documents are documents designated pursuant to paragraph 2;
- “Highly Confidential - Attorneys’ Eyes Only” (“AEO”) are documents designated pursuant to paragraph 3;
- “Documents” are all materials within the scope of Fed. R. Civ. P. 34;
- “Outside Vendors” means messenger, copy, coding, and other clerical services, including document processing and conversion, archiving and database services, electronic document processing firms and personnel, translators or interpreters, and related vendors not employed by a party or its Attorneys; and
- “Written Assurance” means an executed document in the form attached as Exhibit A.

2. A Party may designate any document, which includes, but is not limited to, documents, interrogatory responses, other discovery responses, and portions of transcripts, “Confidential,” to protect information within the scope of Fed. R. Civ. P. 26(c); provided, however, such designation shall constitute a representation to the Court that the designating Party in good faith believes that the material so designated is entitled to protection from disclosure and relates to, among other things, confidential technical, business, or financial information including abstracts, summaries, or information derived therefrom.

3. A Party may designate any document, which includes, but is not limited to, documents, interrogatory responses, other discovery responses, and portions of transcripts, “Highly Confidential - Attorneys’ Eyes Only” to protect information within the scope of Fed R. Civ. P. 26(c); provided, however, such designation shall constitute a representation to the Court that the designating Party in good faith believes that the material so designated is entitled to protection from disclosure and relates to, among other things, trade secrets, pending patent

1 applications, research and development or other highly sensitive technical information, or highly-  
2 sensitive business-related financial information including abstracts, summaries, or information  
3 derived therefrom.

4 4. The following provisions relate to computer source code and shall govern the  
5 handling and treatment of such source code.

6 Plaintiff states that it requested source code from Defendants on November 15, 2013; to  
7 date, Defendants have not produced any source code. Defendants state that the inclusion of these  
8 provisions in this Protective Order shall have no bearing on whether a Party is obligated to  
9 produce source code, because this Protective Order governs the production of source code that is  
10 required and permitted to be produced by law.

11 Documents or other things that contain a Party's source code may be designated "Highly  
12 Confidential - Attorneys' Eyes Only - Computer Source Code" if they include confidential,  
13 proprietary, and/or trade secret software (collectively referred to as "source code").

14 The source code shall be made available for the opposing party's inspection at a mutually  
15 agreed-upon location.

16 The following conditions shall govern the production, inspection, review, and use of  
17 source code.

18 a. All source code produced for inspection shall be deemed designated as "Highly  
19 Confidential - Attorneys' Eyes Only - Computer Source Code." All such source  
20 code, and any other Protected Information designated as "Highly Confidential -  
21 Attorneys' Eyes Only - Computer Source Code," shall be subject to the provisions  
22 in this paragraph 4.

23 b. All source code will be made available by the producing Party to the  
24 receiving Party's outside counsel and/or experts in a private room on a secured  
25 computer without Internet or network access to other computers, to protect against  
26 any unauthorized copying, transmission, removal, or other transfer of any source  
27 code outside the computer on which the source code is provided for inspection (the  
28 "Source Code Computer"). The producing Party shall be obligated to install and

1 maintain such tools or programs necessary to review and search the code produced  
2 on the platform produced. The producing party shall make the required source  
3 code on the Source Code Computer available for initial inspection at any time  
4 during regular business hours upon receiving five (5) business days advance notice  
5 from the receiving party. If the producing Party objects that the source code is not  
6 discoverable information, the producing Party shall make such objection known to  
7 the receiving Party within five (5) business days. If, within three (3) business days  
8 following making such objection known, the parties are unable to resolve such  
9 objection via a meet and confer, the producing Party shall be entitled to seek a  
10 Court resolution of whether viewing the source code in question is reasonably  
11 necessary to any case preparation activity. Failing to seek Court action within five  
12 (5) business days of the meet and confer shall constitute a waiver of any objection  
13 by the producing Party. Once it is established that the source code is discoverable  
14 information (whether by consent, waiver, or judicial determination), each additional  
15 source code inspection shall require only three business days advance notice.

- 16 c. The receiving Party's outside counsel and/or expert shall be entitled to take notes  
17 relating to the source code but may not copy the source code into the notes. No  
18 copies of any portion of the source code may leave the room in which the source  
19 code is inspected except as otherwise provided herein. No written or electronic  
20 record of the source code is permitted except as otherwise provided herein.
- 21 d. The producing Party shall make available a printer for on-site printing during  
22 inspection of the code. The receiving Party may print portions of the source code  
23 only when reasonably necessary to facilitate the receiving Party's preparation of the  
24 case, including when reasonably necessary to prepare any filing with the Court or  
25 to serve any pleadings or other papers on any other Party; to prepare internal  
26 attorney work product materials; or to prepare other necessary case materials such  
27 as testifying expert reports, consulting expert written analyses, and related drafts  
28 and correspondences. The receiving Party shall print only such portions as are

1 reasonably necessary for the purposes for which any part of the source code is  
2 printed at the time. In no event may the receiving Party print more than 10  
3 consecutive pages without prior written approval by the producing Party. With  
4 respect to the counting of any set of consecutive pages, programmer's comments  
5 shall not be counted against the 10-page limitation. Upon printing any such  
6 portions of source code, the printed pages shall be collected by the producing Party.  
7 The producing Party shall Bates number, copy, and label "Highly Confidential -  
8 Attorneys' Eyes Only - Computer Source Code" any pages printed by the receiving  
9 Party. If the producing Party objects that the printed portions are not reasonably  
10 necessary to any case preparation activity, the producing Party shall make such  
11 objection known to the receiving Party within five (5) business days. If, within  
12 three (3) business days following making such objection known, the parties are  
13 unable to resolve such objection via a meet and confer, the producing Party shall be  
14 entitled to seek a Court resolution of whether the printed source code in question is  
15 reasonably necessary to any case preparation activity. Failing to seek Court action  
16 within five (5) business days of the meet and confer shall constitute a waiver of any  
17 objection by the producing party and the producing party shall immediately provide  
18 the printed portions of the source code to the receiving party via an overnight  
19 delivery service. In the absence of any objection, or upon resolution of any such  
20 dispute by the Court, the producing Party shall provide one copy set of such pages  
21 to the receiving Party within five (5) business days via an overnight delivery  
22 service and shall retain one copy set. The printed pages shall constitute part of the  
23 source code produced by the producing Party in this action.

- 24 e. A list of names of persons who will view the source code will be provided to the  
25 producing Party in conjunction with any written (including email) notice requesting  
26 inspection.
- 27 f. Other than as provided in subsection (c) or (d) above, the receiving Party will not  
28 copy, remove, or otherwise transfer or transmit in any way any source code from

1 the source code computer including, without limitation, copying, removing, or  
2 transferring the source code onto any other computers or peripheral equipment.

- 3 g. The receiving Party shall maintain and store the printed portions of the source code  
4 at their offices or at their expert(s)' offices in a manner that prevents duplication of  
5 or unauthorized access to the source code, including, without limitation, storing the  
6 source code in a locked room or cabinet at all times when it is not in use;
- 7 h. The receiving Party's outside counsel of record may make no more than five (5)  
8 additional paper copies of any portions of the source code printed pursuant to sub-  
9 paragraph (d), not including copies attached to court filings, and shall log the  
10 location of such copies. The producing Party shall not unreasonably deny a  
11 receiving Party's request to make additional copies, providing that the request is for  
12 good cause and for use that otherwise complies with this order.
- 13 i. The receiving Party may include excerpts of source code in a pleading, exhibit,  
14 expert report, discovery document, deposition transcript, other Court document, or  
15 any drafts of these documents ("Source Code Documents"). The receiving Party  
16 shall include only such excerpts as are reasonably necessary for the purposes for  
17 which such part of the source code is used – for example, excerpts of  
18 approximately 25 to 40 lines in length would normally be allowed.
- 19 j. To the extent portions of source code are quoted in a Source Code Document,  
20 either (1) the entire document will be stamped and treated as "Highly Confidential -  
21 Attorneys' Eyes Only - Computer Source Code" or (2) those pages containing  
22 quoted source code will be separately bound, and stamped and treated as "Highly  
23 Confidential - Attorneys' Eyes Only - Computer Source Code." For the avoidance  
24 of doubt, redacting the portions of source code (including comments) that appear in  
25 a Source Code Document would negate the need to either treat the entire document,  
26 or those pages, as "Highly Confidential - Attorneys' Eyes Only - Computer Source  
27 Code"; however, to the extent that a given document also contains "Highly  
28 Confidential - Attorneys' Eyes Only" information or "Confidential" information

1 designated as such pursuant to this Order, the document shall still be entitled to any  
2 appropriate protections pursuant to this Order.

- 3 k. All paper copies shall be securely destroyed if they are no longer in use (*e.g.*, at the  
4 conclusion of a deposition). Copies of source code that are marked as deposition  
5 exhibits shall not be provided to the Court Reporter or attached to deposition  
6 transcripts; rather, the deposition record will identify the exhibit by its production  
7 numbers.
- 8 l. The receiving Party may not create electronic images, or any other images, of the  
9 source code from the paper copy for use on a computer (*e.g.*, may not scan the  
10 source code to a PDF, or photograph the code). The receiving Party may create an  
11 electronic copy or image of selected portions of the source code only when  
12 reasonably necessary to accomplish any filing with the Court or to serve any  
13 pleadings or other papers on any other Party (including expert reports). Images or  
14 copies of source code shall not be included in correspondence between the Parties  
15 (references to production numbers shall be used instead) and shall be omitted from  
16 pleadings and other papers except to the extent permitted herein.
- 17 m. To the extent a receiving Party desires to have an outside expert inspect or receive  
18 confidential computer source code, the outside expert shall be provided with a copy  
19 of this Protective Order and execute a “Written Assurance” in the form attached as  
20 Exhibit A. Each Written Assurance must be served on opposing counsel at least  
21 seven (7) days prior to disclosure to such person or inspection by such person of  
22 “Highly Confidential - Attorneys’ Eyes Only - Computer Source Code.” Such  
23 notice to opposing counsel shall include a reasonable description of the person to  
24 whom disclosure or inspection is sought sufficient to permit objection to be made.  
25 A disclosing Party may object in writing to such disclosure within five (5) days  
26 after receipt of notice. The Parties agree to promptly confer in good faith to resolve  
27 any such objection. If the Parties are unable to resolve any objection, the objecting  
28 Party may file a motion with the Court within ten (10) days of the objection notice,

1 or within such other time as the Parties may agree, seeking a protective order with  
2 respect to the proposed inspection or disclosure of “Highly Confidential -  
3 Attorneys’ Eyes Only - Computer Source Code.” The Party seeking to allow the  
4 inspection or disclosure of “Highly Confidential - Attorneys’ Eyes Only -  
5 Computer Source Code” shall have the burden of establishing the independence of  
6 such person and the need for such person to see the information, and the objecting  
7 Party shall have the burden of establishing the reason why an inspection by such  
8 person is inappropriate. No inspection by or disclosure to such person shall occur  
9 until all such objections are resolved by agreement or Court order, or until the  
10 objecting Party fails to file a motion with the Court seeking a protective order  
11 within the timeframe outlined above (at which point the objection is deemed to be  
12 waived).

13 5. All “Confidential,” “Highly Confidential - Attorneys’ Eyes Only” and “Highly  
14 Confidential - Attorneys’ Eyes Only- Computer Source Code” documents, along with the  
15 information contained in the documents, shall not be used for any purpose whatsoever other than  
16 the prosecution or defense of this action or any actions or proceedings involving both sides, and  
17 any appeal thereof. Any other use is prohibited except by consent of the producing party or by  
18 order of the Court. Notwithstanding the above, a party is free to do whatever it desires with its  
19 own “Confidential,” “Highly Confidential - Attorneys’ Eyes Only,” and “Highly Confidential -  
20 Attorneys’ Eyes Only- Computer Source Code” information.

21 6. Access to any “Confidential” document shall be limited to:

- 22 a) the Court and its staff;
- 23 b) Attorneys, their law firms, their employees and agents, and their Outside Vendors;
- 24 c) persons shown on the face of the document to have authored or received it, any  
25 person who has previously seen or was aware of it, and/or the producing party or its  
26 designated representatives (e.g., a 30(b)(6) witness);
- 27 d) court reporters retained to transcribe testimony and independent language  
28 interpreters used at deposition or hearings;



- e) employees of the receiving party and its affiliates;
- f) other outside persons (i.e., persons not currently employed by any party) who are retained by a party or its Attorneys to provide assistance as mock jurors or focus group members or the like, or to furnish technical or expert services, and/or to give testimony in this action who have signed the undertaking described in Paragraph 9 below; and
- g) other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall sign the undertaking described in Paragraph 9 below.

7. Access to any “Highly Confidential - Attorney’s Eyes Only” or “Highly Confidential-Attorneys’ Eyes Only- Computer Source Code” document shall be limited to:

- a) the Court and its staff;
- b) Attorneys, their law firms, their employees and agents, and their Outside Vendors;
- c) persons shown on the face of the document to have authored or received it, any person who has previously seen or was aware of it, and/or the producing party or its designated representatives (e.g., a 30(b)(6) witness);
- d) court reporters retained to transcribe testimony and independent language interpreters used at deposition or hearings;
- e) (i) Designated In-House Counsel of the receiving party (1) who has no involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the “Written Assurance” (Exhibit A), and (4) as to whom the procedures set forth in subparagraph (ii) below, have been followed;<sup>1</sup>
- (ii) Unless otherwise ordered by the court or agreed to in writing by the producing party, a Party that seeks to disclose to Designated In-House Counsel any information or item that has been designated “HIGHLY CONFIDENTIAL –

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<sup>1</sup> This Order contemplates that Designated In-House Counsel shall not have access to any information or items designated “Highly Confidential - Attorneys’ Eyes Only - Computer Source Code.”

1 ATTORNEYS' EYES ONLY" first must make a written request to the producing  
2 party that (1) sets forth the full name of the Designated In-House Counsel and the  
3 city and state of his or her residence and (2) describes the Designated In-House  
4 Counsel's current and reasonably foreseeable future primary job duties and  
5 responsibilities in sufficient detail to determine if In-House Counsel is involved, or  
6 may become involved, in any competitive decision-making.

7 (iii) A Party that makes a request and provides the information specified in the  
8 preceding respective subparagraphs may disclose the subject "HIGHLY  
9 CONFIDENTIAL – ATTORNEYS' EYES ONLY" material to the identified  
10 Designated In-House Counsel unless, within 14 days of delivering the request, the  
11 Party receives a written objection from the producing party. Any such objection  
12 must set forth in detail the grounds on which it is based.

13 (iv) A Party that receives a timely written objection must meet and confer with  
14 the producing party (through direct voice to voice dialogue) to try to resolve the  
15 matter by agreement within seven days of the written objection. If no agreement is  
16 reached, the Party seeking to make the disclosure to Designated In-House Counsel  
17 may file a motion seeking permission from the court to do so. Any such motion  
18 must describe the circumstances with specificity, set forth in detail the reasons why  
19 disclosure to Designated In-House Counsel is reasonably necessary, assess the risk  
20 of harm that the disclosure would entail, and suggest any additional means that  
21 could be used to reduce that risk. In addition, any such motion must be  
22 accompanied by a competent declaration describing the parties' efforts to resolve  
23 the matter by agreement (i.e., the extent and the content of the meet and confer  
24 discussions) and setting forth the reasons advanced by the producing party for its  
25 refusal to approve the disclosure.

26 In any such proceeding, the Party opposing disclosure to Designated In-House  
27 Counsel shall bear the burden of proving that the risk of harm that the disclosure  
28 would entail (under the safeguards proposed) outweighs the receiving party's need

1 to disclose the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
2 material to its Designated In-House Counsel.

3 f) other outside persons (i.e., persons not currently employed by any party) who are  
4 retained by a party or its Attorneys to provide assistance or to furnish technical or  
5 expert services, and/or to give testimony in this action who have signed the  
6 undertaking described in Paragraph 9 below; and

7 g) other persons only by written consent of the producing party or upon order of the  
8 Court and on such conditions as may be agreed or ordered. All such persons shall  
9 sign the undertaking described in Paragraph 9 below.

10 8. Third parties producing documents in the course of this action may also designate  
11 documents as “Confidential,” “Highly Confidential - Attorneys’ Eyes Only,” or “Highly  
12 Confidential- Attorneys’ Eyes Only- Computer Source Code” subject to the same protections and  
13 constraints as the parties to the action. A copy of the Protective Order shall be served along with  
14 any subpoena served in connection with this action. All documents produced by such third parties  
15 shall be treated as “Highly Confidential - Attorneys’ Eyes Only” for a period of 7 days from the  
16 date of their production, and during that period any party may designate such documents as  
17 “Confidential,” “Highly Confidential - Attorneys’ Eyes Only” or “Highly Confidential -  
18 Attorneys’ Eyes Only - Computer Source Code” pursuant to the terms of the Protective Order.

19 9. Each person appropriately designated pursuant to paragraphs 6(f), 6(g), 7(e), 7(f) or  
20 7(g) to receive “Confidential” or “Highly Confidential - Attorneys’ Eyes Only” information shall  
21 be provided with a copy of this Protective Order and execute a “Written Assurance” in the form  
22 attached as Exhibit A. Each Written Assurance must be served on opposing counsel at least 7  
23 days prior to disclosure to such person of any “Confidential,” or “Highly Confidential - Attorneys’  
24 Eyes Only” information provided by another party. Such notice to opposing counsel shall include  
25 a reasonable description of the person to whom disclosure is sought sufficient to permit objection  
26 to be made. A party may object in writing to such disclosure within five days after receipt of  
27 notice. The parties agree to promptly confer and use good faith to resolve any such objection. If  
28 the parties are unable to resolve any objection, the objecting party may file a motion with the

1 Court within ten (10) days of the objection notice, or within such other time as the parties may  
2 agree, seeking a protective order with respect to the proposed disclosure. The party seeking  
3 provision of protected information to such person shall have the burden of establishing the  
4 independence of such person from the party seeking to provide the information and the need for  
5 such person to see the information, and the objecting party shall have the burden of providing the  
6 need for a protective order preventing disclosure. No disclosure to such person shall occur until  
7 all such objections are resolved by agreement or Court order—or until the objecting party fails to  
8 file a motion with the Court seeking a protective order within the timeframe outlined above (at  
9 which point the objection is deemed to be waived).

10 10. Portions of depositions taken in this action that contain confidential information  
11 may be designated “Confidential,” “Highly Confidential - Attorneys’ Eyes Only,” or “Highly  
12 Confidential - Attorneys’ Eyes Only - Computer Source Code” and thereby obtain the protections  
13 accorded other “Confidential,” “Highly Confidential - Attorneys’ Eyes Only” or “Highly  
14 Confidential - Attorneys’ Eyes Only - Computer Source Code” documents. Unless otherwise  
15 agreed, depositions shall be treated as “Highly Confidential - Attorneys’ Eyes Only” until 7 days  
16 following receipt of the final transcript. Confidentiality designations for depositions shall be made  
17 by written notice to all other parties within 7 days of receipt of the final transcript, and such  
18 written notice shall identify by page and line number the specific portions of the deposition  
19 transcript that shall be designated; a party may also designate any exhibit or any portion of any  
20 exhibit as “Confidential,” “Highly Confidential - Attorneys’ Eyes Only,” or “Highly Confidential  
21 - Attorneys’ Eyes Only - Computer Source Code.”

22 11. Any party who inadvertently fails to identify documents as “Confidential,” “Highly  
23 Confidential – Attorneys’ Eyes Only” or “Highly Confidential - Attorneys’ Eyes Only - Computer  
24 Source Code” shall, within 7 days from the discovery of its oversight, provide written notice of the  
25 error and substitute appropriately-designated documents. Any party receiving such improperly-  
26 designated documents shall retrieve such documents from persons not entitled to receive those  
27 documents and, upon receipt of the substitute documents, shall return or destroy the improperly-  
28 designated documents. The failure to designate information or documents as “Confidential,”

1 “Highly Confidential - Attorneys’ Eyes Only” or “Highly Confidential - Attorneys’ Eyes Only-  
2 Computer Source Code” and the failure to object to such a designation shall not preclude or in any  
3 way prejudice a party at a later time from subsequently designating or objecting to the designation  
4 of such information or documents as “Confidential,” “Highly Confidential - Attorneys’ Eyes  
5 Only” or “Highly Confidential - Attorneys’ Eyes Only- Computer Source Code.” The parties  
6 understand and agree that failure of a party to designate information or documents as  
7 “Confidential,” “Highly Confidential - Attorneys’ Eyes Only” or “Highly Confidential -  
8 Attorneys’ Eyes Only - Computer Source Code” relieves the receiving party of obligations of  
9 confidentiality until such designation is made, except as otherwise provided herein.

10 12. The parties hereto acknowledge that, while each party will endeavor to identify and  
11 withhold from production any document which that party believes is privileged, given the volume  
12 and nature of material being exchanged, there is a possibility that certain privileged material may  
13 be produced inadvertently. Accordingly, the parties have agreed to the following nonwaiver  
14 agreement. A party who produces any privileged document without intending to waive the claim  
15 of privilege associated with such document may, within ten days after the producing party actually  
16 discovers that such inadvertent production occurred, amend its discovery response and notify the  
17 other party that such document was inadvertently produced and should have been withheld as  
18 privileged. Once the producing party provides such notice to the receiving party, the receiving  
19 party must take reasonable efforts to promptly return the specified document and destroy any  
20 copies thereof. By complying with this obligation, the receiving party does not waive any right it  
21 has to challenge the assertion of privilege and request an order of the court denying such privilege.  
22 If the claim of privilege is disputed, a single copy of the document(s) at issue may be retained by  
23 the receiving party for the exclusive purpose of seeking a prompt judicial determination of the  
24 matter.

25 13. If a party files a document containing “Confidential,” “Highly Confidential -  
26 Attorneys’ Eyes Only” or “Highly Confidential- Attorneys’ Eyes Only-Computer Source Code”  
27 information with the Court, such documents shall be filed *both* (1) under seal with the Clerk of  
28 Court with an accompanying motion to seal in compliance with the applicable local rules

1 governing the filing of such information; and (2) within seven days, on the public docket,  
2 redacting the “Confidential,” “Highly Confidential - Attorneys’ Eyes Only” or “Highly  
3 Confidential- Attorneys’ Eyes Only- Computer Source Code” information.

4 In connection with any motion to seal, the filing party must submit a declaration in support  
5 of the motion to seal explaining why the material merits filing under seal. If a motion to seal is  
6 based on the fact that the opposing party (or non-party) has designated document(s) as  
7 “Confidential,” “Highly Confidential - Attorneys’ Eyes Only” or “Highly Confidential- Attorneys’  
8 Eyes Only-Computer Source Code,” the opposing party (or non-party) shall file a declaration  
9 establishing good cause for the sealing of such document(s) along with a proposed order, or shall  
10 withdraw the designation. The declaration shall be filed within seven days of service on the  
11 opposing party (or non-party) of the request for a sealing order. If the declaration is not filed as  
12 required, the Court may order the document(s) filed in the public record.

13 Upon the failure of the filing or lodging party to properly designate information, any party  
14 or third party who in good faith believes that designation and filing under seal is required may  
15 move the Court to file said information under seal within fourteen (14) days of learning of the  
16 defective filing or lodging.

17 14. Any receiving party may request a change in the designation of any information  
18 designated “Confidential,” “Highly Confidential – Attorneys’ Eyes Only” or “Highly Confidential  
19 – Attorneys’ Eyes Only – Computer Source Code.” Any such document shall be treated as  
20 designated until the change is completed. If the requested change in designation is not agreed to  
21 following a good faith effort to meet and confer to resolve the objection by agreement, the party  
22 seeking the change may move the Court for appropriate relief, providing notice to any third party  
23 whose designation of produced documents as “Confidential,” “Highly Confidential - Attorneys’  
24 Eyes Only,” or “Highly Confidential - Attorneys’ Eyes Only - Computer Source Code” in the  
25 action may be affected. The party asserting that the material is “Confidential,” “Highly  
26 Confidential - Attorneys’ Eyes Only,” or “Highly Confidential - Attorneys’ Eyes Only - Computer  
27 Source Code” shall have the burden of proving that the information in question is within the scope  
28 of protection afforded by Fed. R. Civ. P. 26(c).

1           15.     Within 60 days of the termination of this action, including any appeals, each party  
2 shall either return to the opposing party or destroy all documents designated by the opposing party  
3 as “Confidential,” “Highly Confidential - Attorneys’ Eyes Only,” or “Highly Confidential -  
4 Attorneys’ Eyes Only- Computer Source Code” and all copies of such documents, and shall  
5 destroy all extracts and/or data taken from such documents. Each party shall provide a certification  
6 as to such return or destruction within the 60-day period. Attorneys may retain those materials that  
7 are part of the record, that have been filed with the court, or that are attorney drafts or working  
8 copies of materials that have been filed with the court. Furthermore, attorneys may retain copies  
9 of all pleadings, motions, orders, written discovery, deposition transcripts and exhibits, and other  
10 papers filed with the Court or exchanged by the parties even though they may contain documents  
11 designated for protection under this Order. Attorneys may also retain any correspondence  
12 generated in connection with the action.

13           16.     Any party may apply to the Court for a modification of the Protective Order, and  
14 nothing in this Protective Order shall be construed to prevent a party from seeking such further  
15 provisions enhancing or limiting confidentiality as may be appropriate.

16           17.     It is not the intent of the parties, or of the Court, that an attorney or law firm that  
17 acquires knowledge of or is given access to “Confidential,” “Highly Confidential - Attorneys’  
18 Eyes Only,” and/or “Highly Confidential - Attorneys’ Eyes Only - Computer Source Code”  
19 information pursuant to this Order should thereby be disqualified from other representations  
20 adverse to the producing party on account of such knowledge or access.

21           18.     No action taken in accordance with the Protective Order shall be construed as a  
22 waiver of any claim or defense in the action or of any position as to discoverability or  
23 admissibility of evidence.

24           19.     Nothing in this Protective Order shall bar or otherwise restrict any attorney from  
25 rendering advice to a party-client or, in the course thereof, relying upon his or her knowledge of  
26 “Confidential,” “Highly Confidential - Attorneys’ Eyes Only,” and/or “Highly Confidential -  
27 Attorneys’ Eyes Only - Computer Source Code” information; provided, however, that in rendering  
28 such advice the attorney shall not disclose any “Confidential,” “Highly Confidential - Attorneys’



1 Eyes Only,” and/or “Highly Confidential - Attorneys’ Eyes Only - Computer Source Code”  
2 information received from a producing party to unauthorized persons.

3 20. The obligations imposed by the Protective Order shall survive the termination of  
4 this action.

5 21. As there is a presumption in favor of open and public judicial proceedings in the  
6 federal courts, this Order shall be strictly construed in favor of public disclosure and open  
7 proceedings wherever possible. Furthermore, absent order of the Court, all trials are open to the  
8 public and there will be no restrictions on the use at trial of any document designated for  
9 protection under this Order. Upon motion of the party designating a document for protection  
10 under this Order, the Court may thereafter make such orders as are necessary to govern the use of  
11 such documents or information at trial.



**EXHIBIT A**

**WRITTEN ASSURANCE**

\_\_\_\_\_ declares that:

I reside at \_\_\_\_\_ in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

My telephone number is \_\_\_\_\_.

I am currently employed by \_\_\_\_\_, located at \_\_\_\_\_, and my current job title is \_\_\_\_\_.

I have read and I understand the terms of the Protective Order dated \_\_\_\_\_, filed in Case No. 2:13-cv-01616-RCJ-NJK, pending in the United States District Court for the District of Nevada. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I shall not divulge any documents, or copies of documents, designated “Confidential,” “Highly Confidential - Attorneys’ Eyes Only,” or “Highly Confidential - Attorneys’ Eyes Only - Computer Source Code” obtained pursuant to such Protective Order, or the contents of such documents, to any person other than those specifically authorized by the Protective Order. I shall not copy or use such documents except for the purposes of this action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than 30 days after final termination of this action, I shall return to the attorney from whom I have received them, or destroy, any documents in my possession designated “Confidential,” “Highly Confidential - Attorneys’ Eyes Only,” or “Highly Confidential - Attorneys’ Eyes Only - Computer Source Code” and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents. If I elect to destroy such documents, I shall inform the attorney from whom I have received them, in writing and with my signature, that I have done so.

1 I submit myself to the jurisdiction of the United States District Court for the District of  
2 Nevada for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

3  
4 Executed on \_\_\_\_\_  
5 (Date) (Signature)  
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1 Dated: February 26, 2014

Respectfully submitted,

2 /s/ Peter Lancaster

3 Peter M. Lancaster (*pro hac vice*)

4 Kenneth Levitt (*pro hac vice*)

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24 BECKHOFF AUTOMATION GmbH

/s/ Aaron Foldenauer

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ATTORNEYS FOR PLAINTIFF ROCKWELL

AUTOMATION, INC.

**IT IS SO ORDERED:**

  
UNITED STATES MAGISTRATE JUDGE

DATED: February 27, 2014 \_\_\_\_\_